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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

NATIONSTAR HECM  
ACQUISITION TRUST 2017-2,  
WILMINGTON SAVINGS FUND  
SOCIETY, FSB,

Plaintiff,

v.

LAWRENCE D. VITO, et al.,

Defendants.

Case No. CV 18-06240-PSG (RAOx)

**ORDER REMANDING ACTION  
AND DENYING REQUEST TO  
PROCEED WITHOUT PREPAYING  
FEES OR COSTS**

**I.**

**FACTUAL BACKGROUND**

Plaintiff Nationstar Hecm Acquisition Trust 2017-2, Wilmington Savings Fund Society, FSB ("Plaintiff") filed an unlawful detainer action in Los Angeles County Superior Court against Defendants Lawrence D. Vito and Does 1 to 20 ("Defendants"), on or about April 12, 2018. Notice of Removal ("Removal") and Attached Complaint ("Compl."), Dkt. No. 1. Defendants are allegedly occupants of real property located in Claremont, California ("the property"). Compl. ¶¶ 5, 7. Plaintiff is the owner of the property. *Id.* ¶¶ 7-8. Plaintiff filed the unlawful detainer action seeking restitution of the property and monetary damages. *Id.* at 3.

1 Defendant Vito filed a Notice of Removal on July 19, 2018, invoking the  
2 Court's federal question jurisdiction. Removal at 2-3. Defendant Vito also filed a  
3 Request to Proceed Without Prepaying Fees or Costs. Dkt. No. 3.

## 4 II.

### 5 DISCUSSION

6 Federal courts are courts of limited jurisdiction, having subject matter  
7 jurisdiction only over matters authorized by the Constitution and statute. *See, e.g.,*  
8 *Kokkonen v. Guardian Life Ins. Co.*, 511 U.S. 375, 377, 114 S. Ct. 1673, 128 L. Ed.  
9 2d 391 (1994). It is this Court's duty always to examine its own subject matter  
10 jurisdiction, *see Arbaugh v. Y&H Corp.*, 546 U.S. 500, 514, 126 S. Ct. 1235, 163 L.  
11 Ed. 2d 1097 (2006), and the Court may remand a case summarily if there is an  
12 obvious jurisdictional issue. *Cf. Scholastic Entm't, Inc. v. Fox Entm't Grp., Inc.*,  
13 336 F.3d 982, 985 (9th Cir. 2003) ("While a party is entitled to notice and an  
14 opportunity to respond when a court contemplates dismissing a claim on the merits,  
15 it is not so when the dismissal is for lack of subject matter jurisdiction.") (omitting  
16 internal citations). A defendant attempting to remove an action from state to  
17 federal court bears the burden of proving that jurisdiction exists. *See Scott v.*  
18 *Breeland*, 792 F.2d 925, 927 (9th Cir. 1986). Further, a "strong presumption"  
19 against removal jurisdiction exists. *See Gaus v. Miles, Inc.*, 980 F.2d 564, 567 (9th  
20 Cir. 1992).

21 Defendant Vito asserts that this Court has subject matter jurisdiction pursuant  
22 to 28 U.S.C. §§ 1331 and 1441. Removal at 2-3. Section 1441 provides, in  
23 relevant part, that a defendant may remove to federal court a civil action in state  
24 court of which the federal court has original jurisdiction. *See* 28 U.S.C. § 1441(a).  
25 Section 1331 provides that federal "district courts shall have original jurisdiction of  
26 all civil actions arising under the Constitution, laws, or treaties of the United  
27 States." *See id.* § 1331.

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1 Here, the Court's review of the Notice of Removal and attached Complaint  
2 makes clear that this Court does not have federal question jurisdiction over the  
3 instant matter under 28 U.S.C. § 1331. First, there is no federal question apparent  
4 from the face of the Complaint, which appears to allege only a simple unlawful  
5 detainer cause of action. *See Wescom Credit Union v. Dudley*, No. CV 10-8203  
6 GAF (SSx), 2010 WL 4916578, at \*2 (C. D. Cal. Nov. 22, 2010) ("An unlawful  
7 detainer action does not arise under federal law.") (citation omitted); *IndyMac*  
8 *Federal Bank, F.S.B. v. Ocampo*, No. EDCV 09-2337-PA (DTBx), 2010 WL  
9 234828, at \*2 (C.D. Cal. Jan. 13, 2010) (remanding an action to state court for lack  
10 of subject matter jurisdiction where plaintiff's complaint contained only an  
11 unlawful detainer claim).

12 Additionally, to the extent Defendant Vito attempts to base federal question  
13 jurisdiction on defenses to the unlawful detainer action, a defense cannot provide a  
14 basis for federal question jurisdiction. *See Caterpillar Inc. v. Williams*, 482 U.S.  
15 386, 393, 107 S. Ct. 2425, 2430, 96 L. Ed. 318 (1987) ("[I]t is now settled law that  
16 a case may *not* be removed to federal court on the basis of a federal defense . . .  
17 even if the defense is anticipated in the plaintiff's complaint, and even if both  
18 parties concede that the federal defense is the only question truly at issue."). Thus,  
19 to the extent Defendant Vito's defenses to the unlawful detainer action are based on  
20 alleged violations of federal law, those defenses do not provide a basis for federal  
21 question jurisdiction. *See id.* Because Plaintiff's complaint does not present a  
22 federal question, either on its face or as artfully pled, the Court lacks jurisdiction  
23 under 28 U.S.C. § 1331.

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III.

CONCLUSION

Accordingly, IT IS ORDERED that this case is REMANDED to the Superior Court of California, County of Los Angeles, forthwith.

IT IS FURTHER ORDERED that Defendant's Request to Proceed Without Prepaying Fees or Costs is DENIED as moot.

IT IS SO ORDERED.

DATED: 01/21/0



PHILIP S. GUTIERREZ  
UNITED STATES DISTRICT JUDGE

Presented by:

Rozella A. Oliver

ROZELLA A. OLIVER  
UNITED STATES MAGISTRATE JUDGE